

For a sale to qualify as exempt, because the item is sold to an exempt organization, the seller may not rely on an invalid exemption number, even if accepted in good faith. See 86 Ill. Adm. Code 130.2005. (This is a GIL.)

October 13, 2005

Dear Xxxxx:

This letter is in response to your letter dated April 29, 2005, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.tax.illinois.gov to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

My question to the tax department was, 'is it the responsibility of the retailer to verify that the tax exempt number provided by the customer for an exemption purchase is a valid number registered with the state?'

I received an answer from the Taxpayer Assistance Division/CLB, that 'no, it is only your responsibility to make sure you have the exemption number or resale tax number in your books and records. If an audit was ever conducted, it would be up to the purchaser to prove that they are tax exempt.'

When I asked for a publication or Section reference, they stated I should send you a letter requesting for a 'legal letter ruling' to support their reply. Can this be done and sent back to:

NAME/ADDRESS

Thank you for your help in this matter.

DEPARTMENT'S RESPONSE:

Sales for Resale:

Part (d) of Section 130.1405 of the Department's administrative rules quotes Section 2(c) of the Retailers' Occupation Tax Act, which provides that a failure to present an active registration number or resale number and a certification to the seller that a sale is for resale, creates a presumption that a sale is not for resale. This presumption may be rebutted by other evidence that all of the seller's sales are for resale, or that a particular sale is a sale for resale. Court cases have determined that the acceptance of a Certificate of Resale with an invalid registration number will not otherwise relieve the seller of liability from Retailers' Occupation Tax, even if accepted by the seller in good faith. See 86 Ill. Adm. Code 130.1405.

Sales to Exempt Organizations:

For a sale to qualify as exempt, because the item is sold to an exempt organization, the seller may not rely on an invalid exemption number, even if accepted in good faith. The burden of sustaining a right to a tax exemption is on the person (retailer) claiming that the purchase is tax exempt. See 86 Ill. Adm. Code 130.2005(r)(3). You may want to review the Department's prior letter rulings on these issues, such as ST-03-0163-GIL, that are available on the Department's internet website. The letter rulings are available to the public for general information purposes on the Department's internet website under the heading of "Laws/Regs/Rulings."

We recommend that a retailer contact the Department's Division of Central Registration (217-785-3707) to verify that a purchaser's resale number is valid. In addition, a retailer may contact the Department's Sales Tax Division (217-782-8881) to verify that a Department issued "E-Number" is valid at the time of purchase.

I hope this information is helpful. If you require additional information, please visit our website at www.tax.illinois.gov or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

Edwin E. Boggess
Associate Counsel

EEB:msk